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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/740,052	12/19/2000	Bruce Perlmutter	10360-079001/13361HUUS01U	4810

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EXAMINER

DUONG, DUC T

ART UNIT

PAPER NUMBER

2663

DATE MAILED: 01/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/740,052

Applicant(s)

PERLMUTTER ET AL.

Examiner

Duc T. Duong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-10 and 12-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-10 and 12-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. In response the amendment filed on October 30, 2002, claims 2 and 11 are canceled, and claims 1, 3-10, and 12-18 are pending.

Claim Objections

2. Claims 1, 3, 5, 8-10, 12, 14, 17, and 18 are objected to because of the following informalities: The acronym VPN need to be written out. Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or
(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

4. Claims 1, 3-10, and 12-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Ma et al (U.S. Patent 5,953,338).

Regarding to claims 1 and 10, Ma discloses a system (Fig. 2) for managing bandwidth of a remote link comprising a server 140 (col. 7 lines 5-14), a contention pool 145 having a portion of the bandwidth for at least one application group (col. 7 lines 20-26), and a meter 150 for metering the packets belonging to the application group (col. 7 lines 26-38), wherein the server is a VPN server (Fig. 1A col. 5 lines 57-66).

Regarding to claims 3 and 12, Ma discloses a system (Fig. 2) for managing bandwidth of a remote link comprising a server 140 (col. 7 lines 5-14), a contention pool 145 having a portion of the bandwidth for at least one application group (col. 7 lines 20-26), and a meter 150 for metering the packets belonging to the application group (col. 7 lines 26-38), wherein the server is directly connected to other links 302 having larger bandwidth than the available bandwidth of the remote links 310-316 (Fig. 3 col. 9 lines 1-13).

Regarding to claims 4 and 13, Ma discloses the packets belonging to the application group (virtual path) share a pre-defined configuration (quality of service), and see col. 11 lines 1-10.

Regarding to claims 5 and 14, Ma discloses a system (Fig. 2) for managing bandwidth of a remote link comprising a server 140 (col. 7 lines 5-14), a contention pool 145 having a portion of the bandwidth for at least one application group (col. 7 lines 20-26), and a meter 150 for metering the packets belonging to the application group (col. 7 lines 26-38), wherein the packets belonging to the application group contend equally for the contention pool (Fig. 4A col. 11 lines 11-26).

Regarding to claims 6 and 15, Ma discloses the meter manages flow rate of the packets going through the server in either direction (Fig. 1B col. 6 lines 5-19).

Regarding to claims 7 and 16, Ma discloses the meter rejects the packets if the flow rate exceeds the assigned portion of the bandwidth (col. 8 lines 1-12).

Regarding to claims 8 and 17, Ma discloses a system (Fig. 2) for managing bandwidth of a remote link comprising a server 140 (col. 7 lines 5-14), a contention pool

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145 having a portion of the bandwidth for at least one application group (col. 7 lines 20-26), and a meter 150 for metering the packets belonging to the application group (col. 7 lines 26-38), and a user interface (client) that allows a user to specify the bandwidth of the link (col. 12 lines 1-17).

Regarding to claims 9 and 18, Ma discloses a system (Fig. 2) for managing bandwidth of a remote link comprising a server 140 (col. 7 lines 5-14), a contention pool 145 having a portion of the bandwidth for at least one application group (col. 7 lines 20-26), and a meter 150 for metering the packets belonging to the application group (col. 7 lines 26-38), and a user interface (client) that allows a user to specify the assigned portion of the bandwidth (col. 10 lines 11-55).

Response to Arguments

5. Applicant's arguments filed October 30, 2002 have been fully considered but they are not persuasive. Regarding to Applicant's argument of Ma fails to teach or suggest a "how a client should go about allocating the bandwidth between internal applications" on page 4, Applicant's attention is directed to col. 8 lines 46-56, wherein Ma discloses for the allocation of bandwidth between various virtual path and/or virtual path grouping (applications). In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "the Call Control 140 in Ma is not a VPN server as the term is used in this application, since it does not employing a tunneling technique that enables one network to send its data to a destination via another network and it does not perform encapsulation or encryption to enable packets to be securely transmitted over untrusted

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network” on page 6) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that “the Call Control 140 in Ma is not a VPN server as the term is used in this application, since it does not employing a tunneling technique that enables one network to send its data to a destination via another network and it does not perform encapsulation or encryption to enable packets to be securely transmitted over untrusted network” on page 6, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Noted specifically to claims 5, 8, and 9, the recitation “VPN server” has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Based on the reasons set forth above, the rejection remains held.

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Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duc T. Duong whose telephone number is 703-605-5146. The examiner can normally be reached on M-Th (8:30 AM-5:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau T. Nguyen can be reached on 703-308-5340. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9314 for regular communications and 703-872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-9600.

DD

January 8, 2003

